

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 09-10074-01
	)	
IGNACIO BALDERAMA-ALMENDARIZ,	)	
	)	
Defendant.	)	
_____	)	

**Memorandum and Order**

This matter came before the court on October 26, 2009 for sentencing. At the sentencing hearing, defense counsel noted that defendant denies that he committed two of the prior convictions listed in the Presentence Report. Specifically, defendant contends that ¶¶ 31 and 32 of the PSR (Barton Co. Dist. Co. Nos. 93CR152 and 93CR295) (Revised PSR Oct. 6, 2009) reflect convictions that he did not commit. According to defense counsel, the defense recently obtained mug shots showing the offender in these two cases, and the defendant allegedly recognizes the photos as a relative who has previously used the defendant's name.

The court determined at sentencing that it did need not make a ruling on this matter because the matter will not be taken into account and will not affect sentencing. Fed.R.Crim.P. 32(h)(3)(B). The two prior convictions give rise to no criminal history points and do not affect the offense level. Nor do they affect the sentence. The sentence in this case is based upon the parties' Rule 11(c)(1)(C) plea agreement, and the plea agreement and the sentence are unaffected in any way by these two prior convictions.

Subsequent to the sentencing hearing, the Probation Office reviewed the records and

determined there was insufficient evidence to conclude that the criminal convictions listed in ¶¶ 31 and 32 of the PSR were committed by this defendant. The court will therefore sustain the defendant's objection to these two convictions. As before, however, this determination has no effect on the plea agreement, the proposed Rule 11(c)(1)(C) sentence, the advisory guideline range, or the sentence imposed by the court.

Defendant's objection to the Presentence Report is SUSTAINED. The court determines there is insufficient evidence to show that the convictions listed in ¶¶ 31 and 32 of the PSR were committed by the defendant. The Probation Officer in charge of this case shall see that a copy of this order is appended to any copy of the Presentence Report made available to the Bureau of Prisons.

IT IS SO ORDERED this 26th Day of October, 2009, at Wichita, Ks.

s/Wesley E. Brown  
Wesley E. Brown  
U.S. Senior District Judge